

1 JAMES C. OTTESON, State Bar No. 157781  
[jim@agilityiplaw.com](mailto:jim@agilityiplaw.com)

2 MICHELLE BREIT, State Bar No. 133143  
[mbreit@agilityiplaw.com](mailto:mbreit@agilityiplaw.com)

3 AGILITY IP LAW, LLP  
149 Commonwealth Drive  
4 Menlo Park, CA 94025  
Telephone: (650) 227-4800  
5 Facsimile: (650) 318-3483

6 Attorneys for Defendants  
TECHNOLOGY PROPERTIES LIMITED and  
7 ALLIACENSE LIMITED

8 CHARLES T. HOGE, State Bar No. 110696  
[choge@knlh.com](mailto:choge@knlh.com)

9 KIRBY NOONAN LANCE & HOGE  
35 Tenth Avenue  
10 San Diego, CA 92101  
Telephone: (619) 231-8666  
11 Facsimile: (619) 231-9593

12 Attorneys for Defendant  
PATRIOT SCIENTIFIC CORPORATION

13 UNITED STATES DISTRICT COURT  
14 NORTHERN DISTRICT OF CALIFORNIA  
15 SAN FRANCISCO DIVISION  
16

17 ACER, INC., ACER AMERICA )  
CORPORATION and GATEWAY, INC., )  
18 )  
Plaintiffs, )  
19 )  
v. )  
20 )  
TECHNOLOGY PROPERTIES LIMITED, )  
21 PATRIOT SCIENTIFIC CORPORATION, )  
and ALLIACENSE LIMITED, )  
22 )  
Defendants. )  
23 )

Case No. 3:08-cv-00877 JW

**DEFENDANTS' NOTICE OF MOTION  
AND EXPEDITED MOTION FOR  
RELIEF FROM FIRST PATENT  
SCHEDULING ORDER UNDER CIVIL  
LOCAL RULE 6-3; MEMORANDUM IN  
SUPPORT**

Judge: Hon. James Ware

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HTC CORPORATION and HTC  
AMERICA, INC.,  
  
Plaintiffs,  
  
v.  
  
TECHNOLOGY PROPERTIES LIMITED,  
PATRIOT SCIENTIFIC CORPORATION  
and ALLIACENSE LIMITED,  
  
Defendants.

Case No. 3:08-cv-00882 JW

BARCO, N.V.,  
  
Plaintiffs,  
  
v.  
  
TECHNOLOGY PROPERTIES LIMITED,  
PATRIOT SCIENTIFIC CORPORATION  
and ALLIACENSE LIMITED,  
  
Defendants.

Case No. 3:08-cv-05398 JW

1 **Notice of Motion**

2 Please take notice that pursuant to Civil Local Rule 6-3, Defendants Technology  
3 Properties Limited (“TPL”), Alliacense Limited (“Alliacense”) and Patriot Scientific Corporation  
4 (“Patriot”) hereby move, on an expedited basis, for relief from the Court’s First Patent  
5 Scheduling Order (Docket No. 297), on the grounds that TPL and Alliacense have just retained  
6 Agility IP Law, LLP (“Agility”) as new counsel for these three related cases. Because Agility  
7 needs time to come up to speed in advance of the impending *Markman* deadlines, and because a  
8 modest delay of the deadlines will not prejudice Plaintiffs, Defendants respectfully ask the Court  
9 to grant a continuance of the dates in the First Patent Scheduling Order by 75 days.

10 Also pursuant to Civil Local Rule 6-3, Defendants respectfully ask the Court to hear this  
11 Motion on an expedited basis, with Plaintiffs’ oppositions due by no later than 12:00 p.m. Pacific  
12 Time on Thursday, November 17, 2011. The expedited consideration of Defendants’ Motion is  
13 necessitated by the fact that the parties’ Joint Claim Construction and Prehearing Statement is  
14 currently due on Friday, November 18, 2011 under the First Patent Scheduling Order.

15 This Motion is based on this Notice and Memorandum in Support, the accompanying  
16 Declaration of James C. Otteson in Support of Expedited Relief from First Patent Scheduling  
17 Order, the Proposed Order, and the pleadings and other materials on file in this case.

18 **Memorandum in Support**

19 Defendants TPL and Alliacense have just retained new litigation counsel for these three  
20 related cases: James C. Otteson and Michelle Breit of Agility IP Law, LLP (“Agility”). Agility is  
21 replacing Farella Braun & Martel (“Farella”), former litigation counsel for Defendants.<sup>1</sup> Due to  
22 the complexity of the issues in these cases, Agility respectfully seeks a continuance of 75 days.

23 Since being retained mid last week, Agility has been working diligently to learn the issues  
24 in these complicated patent cases. As the Court is aware, these cases involve the assertion of four

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26 <sup>1</sup> Last week, Defendants filed a proposed stipulated order for Agility to substitute  
27 into these cases as counsel for TPL and Alliacense – in place of Farella. Although the Court has  
28 not yet entered the stipulated order to approve the substitution of Agility for Farella, Special  
Master Denver informed Agility earlier today that Agility should go ahead and file this motion.

1 patents that cover technology relating to microprocessors and electronic systems: U.S. Patent  
2 Nos. 5,440,749, 5,530,890, 6,598,148 and 5,809,336. There are literally dozens of accused  
3 products and over 10 million pages of produced documents in these cases. Because the Agility  
4 attorneys entered notices of appearance *today* – and just signed onto the respective protective  
5 orders in these cases – they have not yet started to become familiar with the millions of  
6 confidential technical documents that form the bases for Defendants’ infringement allegations.

7 Moreover, these cases are on the threshold of the final claim construction procedures that  
8 will quickly culminate in a *Markman* hearing on January 27, 2012. Although Plaintiffs’ counsel  
9 have had the benefit of many months (or even years) of experience with the asserted patents,  
10 Agility is furiously trying to learn and understand the parties’ disputes over nearly three dozen  
11 claim terms, including the “Top Ten” that will be argued at the claim construction hearing. While  
12 the complex subject matter of the patents would present a steep learning curve for any lawyer over  
13 the normal course of six to nine months contemplated under the Patent Local Rules, it is especially  
14 daunting to master this material in just a few weeks.

15 Accordingly, TPL and Alliacense respectfully ask the Court to extend the dates in the First  
16 Patent Scheduling Order by approximately 75 days.<sup>2</sup> Although this short delay will still require  
17 Agility to work hard to understand the claim construction and infringement issues, the task will be  
18 doable – rather than next to impossible.

19 Plaintiffs will not be prejudiced by such a modest continuance. The Plaintiffs in each of  
20 the three related cases – Acer, HTC and Barco – filed their complaints in 2008. But they are  
21 plaintiffs in name only: as declaratory judgment plaintiffs, they are actually the accused infringers  
22 of the asserted patents. Thus, if anything, a short continuance postpones any potential adverse  
23 judgment for plaintiffs; in the meantime, they continue to make, use, sell and import their accused  
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26 <sup>2</sup> In the parties’ call with Special Master Denver on November 10, 2011, Agility  
27 indicated that it would seek a continuance of 60 days. Plaintiffs indicated they would oppose  
28 such a request. Having further considered the scope of tasks associated with learning these  
cases, Agility respectfully seeks a continuance of 75 days.

1 products without any adverse consequence. Plaintiffs enjoyed a similar reprieve when the cases  
2 were delayed during the PTO's reexamination of two of the asserted patents.

3 Finally, the Court and Special Master are relatively new to these cases. Indeed, Special  
4 Master Denver held his first teleconference with the parties on Thursday, November 10th – the  
5 day after TPL and Alliacense retained Agility. Under the circumstances, Defendants respectfully  
6 submit that everyone could benefit from a slight delay of the schedule.

### 7 **Conclusion**

8 For the foregoing reasons, Defendants respectfully ask the Court to grant their expedited  
9 request to continue the dates in the First Patent Scheduling Order (Docket No. 297) by  
10 approximately 75 days, as outlined in the accompanying Proposed Order.

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12  
13 Dated: November 15, 2011

Respectfully submitted,

14 AGILITY IP LAW, LLP

15  
16 By: /s/ James C. Otteson  
James C. Otteson

17 Attorneys for Defendants  
18 TECHNOLOGY PROPERTIES LIMITED  
19 and ALLIACENSE LIMITED

20 KIRBY NOONAN LANCE & HOGE

21  
22 By: /s/ Charles T. Hoge  
Charles T. Hoge

23 Attorneys for Defendant  
24 PATRIOT SCIENTIFIC CORPORATION  
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